UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIACOM INT'L INC., ET AL., Plaintiffs, v. YOUTUBE, INC., ET AL., Defendants	ECF Case Civil No. 07-CV-2103 (LLS)
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, ET AL., on behalf of themselves and all others similarly situated, Plaintiffs, v. YOUTUBE, INC., ET AL., Defendants.	ECF Case Civil No. 07-CV-3582 (LLS)

DECLARATION OF ZAHAVAH LEVINE IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT

I, Zahavah Levine, declare as follows:

1. I am currently Associate General Counsel of Google Inc. ("Google"). Prior to Google's acquisition of YouTube, Inc. ("YouTube"), I was General Counsel and Vice President of Business Affairs of YouTube. I previously submitted a declaration in this matter in support of YouTube's Motion for Summary Judgment, describing a host of steps YouTube has long taken and continues to take in the interests of

copyright protection on its service. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently to them.

2. Typically, content owners license their content to YouTube simply by uploading it to the service after agreeing to YouTube's standard terms of use agreement. YouTube supplements this standardized licensing process with directly negotiated agreements in order to ensure the availability of content from particular content owners. Since I arrived at YouTube in early 2006, I have personally been involved in licensing negotiations with dozens of companies and organizations who desire to have content they claim to own accessible to the world through YouTube. In some cases, the content owner has not previously uploaded its content to YouTube and the parties negotiate the manner in which the content owner will deliver its content to YouTube. In other cases, YouTube offers value in exchange for an agreement that the party "claim" and license to YouTube its content that was uploaded by general users of the site rather than request removal of it, as the content owner might otherwise choose to do. Sometimes, directly negotiated agreements involve both of these types of arrangements.

3. Parties who claim rights in musical compositions (i.e. music publishers) can similarly upload videos that contain their content, license third parties to include their content in videos uploaded to YouTube, or reach direct license agreements with YouTube for the use of their content in videos uploaded to YouTube by ordinary YouTube users . Videos uploaded to YouTube may include music in various forms, such as video footage of the user him or herself playing an instrument or singing, a user's video footage of someone else playing an instrument or singing, or a homemade video of a non-musical event with a commercial sound recording used as background music. When YouTube receives notice from a music publisher that a given video uses, in an unauthorized manner, a composition that the publisher claims to own, YouTube

promptly removes that video from its service in accordance with its standard procedures.

4. YouTube has directly negotiated agreements with a variety of publishers (including the four "major" publishers in the United States) under which the publishers agree to claim and directly license the music and generally not to request the removal of videos that they believe use their compositions. In exchange, where YouTube has been provided with information that a given video uses one of the publishers' compositions, and other conditions are satisfied, YouTube may show advertisements alongside the video and share the associated revenue with the appropriate publishers. The difficulty in implementing these arrangements lies first in determining which particular composition is used in a given video, and then in determining which publisher or publishers own or co-own that composition. Indeed, even where YouTube has entered into commercial relationships with music publishers that include sweeping license grants to publishers' catalogs of music, YouTube has been unable to maximize the commercial potential of these agreements because it has been unable to identify the compositions in a great many videos that appear on the service.

5. Determining that a Particular Composition is used in a Given Video. Since early 2007, YouTube has employed audio detection and filtering technology on the site, starting with a service known as Audible Magic, that it supplemented and eventually replaced with its own Content ID system. As a general matter, when these systems are populated with the appropriate reference materials, they can detect the presence of a specific sound recording in a video uploaded to YouTube. But these systems have no ability to detect the presence of a given musical composition in a video. First, these audio detections systems detect only sound recordings that have been submitted as reference material to our database of reference files. If music

appears on YouTube in a form other than the sound recording for which a reference file has been supplied (such as footage of a person singing or humming a tune), it is unrecognizable to the systems. Second, even for a sound recording that has been provided as a reference file, YouTube requires data correlating a specific sound recording to the specific composition embodied in that sound recording. YouTube has never had ready access to a comprehensive or reliable source of the necessary correlating data. I have asked representatives of the Harry Fox Agency, an operation representing certain music publishing interests, to supply YouTube with data correlating sound recordings to musical compositions that could be integrated into our systems. Harry Fox has declined to provide YouTube the data in such a manner.

6. While there are some sources of publishing information that can be accessed by the public, specifically those offered by ASCAP, BMI and Harry Fox, these sources: (a) expressly disclaim completeness and reliability; (b) are available only for manual, individual, song-by-song look-ups; (c) require the user to have the specific title of a sound recording, which is information YouTube often does not possess; and (d) often yield multiple results for a search on a given title — with the user having no way to determine which of the results are related to the actual song in question.

7. Determining Who the Publisher May Be for a Given Composition. In the absence of a reliable and readily accessible source of information mapping sound recordings to the compositions embodied in them, YouTube must rely on representations from music publishers who can identify particular videos or particular sound recordings as containing compositions they claim to own. In addition, as part of its Content-ID system, YouTube allows any publisher to submit information claiming that a particular sound recording embodies a composition in which it holds rights. From then on, when YouTube's system detects the presence of

that sound recording in a video, absent a conflicting representation from another party claiming rights in the video, YouTube will follow the directions of the publisher with respect to that video. If the publisher has represented that any video using the sound recording and thus the composition makes unauthorized use of the composition, YouTube will block the video from appearing on the service. A publisher may alternatively choose to "track" videos using the sound recording and thus the composition, perhaps because it has licensed another party to use the composition generally and wants to ensure it is being properly compensated by that party. Finally, a publisher may elect to "monetize" a video containing the sound recording that uses their composition. Assuming YouTube has secured permission from the other rights holders who may have an interest in the video (e.g. the owner of the sound recording, the owner of the video and any co-owners of the composition), YouTube will typically then show advertising in connection with that video, and share the revenues with the publisher.

8. Without representations from the relevant publisher, YouTube generally does not have reliable information about who the publisher or publishers may be for a given composition, let alone information on whom those publishers may have authorized to use their composition, or information on whether they wish to remove from the service a particular video using a sound recording embodying their composition.

9. Performing Rights Societies. YouTube has at various times had blanket licenses for public performance rights to musical compositions with performance rights societies, including ASCAP, BMI & SESAC. These agreements are in no way premised on YouTube knowing which compositions are used in a particular video or which publishers own rights to compositions used in any particular sound recording. As part of the agreements, YouTube provides information to the performance rights

societies about certain *sound recording* titles that its systems identify as having been used in videos on the service (and publishing information only to the limited extent YouTube has it). Using that information, the societies then map those sound recordings to compositions using their own identifying information that they have declined to provide to YouTube, and distribute royalty payments to publishers they represent in accordance with their own methodologies.

10. Since at least my arrival at the company on March 20, 2006, the YouTube service has had a feature on video watch pages that allows users who are logged in to their YouTube account to identify particular content as "inappropriate" for various reasons. A user may use this functionality to claim that a video "infringes" his or copyrights. Users who click on that link when viewing a particular video are directed to a page (today at http://www.youtube.com/t/dmca_policy) at which they are given instructions on how submit a DMCA notice for the video. Only users who claim rights in the video are permitted to submit a DMCA notice. In addition, there has always been a "copyright" link on the bottom of every page throughout the site which directs users to instructions on how to send YouTube a DMCA notice.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed the 30 day of April 2010, at San Bruno, California.

Zahavah Levine